



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(106)

FAO no. 2545- 1999 (O&M)

Reserved on:- 29.01.2026

Pronounced on: 04.02.2026

Uploaded on: 05.02.2026

Sumitter Kaur and others**....Appellants****Versus****Thiru P. Nagarajan and others****....Respondents****CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present: Ms. Divyam Suri, Advocate,
for the appellants.

Mr. R.C. Gupta , Advocate,
for the Respondent No 2.

Mr. Satpal Dhamija , Advocate,
for the Respondent No 4.

VIRINDER AGGARWAL, J.

1. The present appeal has been preferred by the Appellants assailing the Award dated 05.04.1999 passed by the learned Motor Accident Claims Tribunal, Patiala , whereby the claim petition filed by Appellants for grant of compensation on account of death of Kala Singh alias Aya Singh in a motor vehicular accident that occurred on 19.04.1996 was dismissed on merits, though the appellants were awarded Rs.50,000/- under no-fault liability.

BACKGROUND FACTS

2. The factual matrix of the Appellants case is that on 19.04.1996, the deceased was driving a truck bearing registration number PB-11-E/9257. While returning from Bangalore towards Punjab, and upon reaching the revenue limits of Ratangru in Chittran District, Karnataka, a truck bearing



registration number TN-33-A/6666 struck the vehicle driven by the deceased. It was specifically asserted by the Appellants that the offending truck (TN-33/A-6666), owned by respondent No. 1, was being driven in an extremely rash and negligent manner by the driver, Sanger alias Govindaraju. It was a head -on collision of such severity that both drivers involved in the accident died. Following the incident, a criminal case was registered under sections 279/337/304-A of the Indian Penal Code at Police Station Amingal, Haripur. At the time of his death, the deceased was approximately 35 years of age and was earning a monthly income of Rs. 4,500/-. On the basis of these parameters, the appellants sought a total compensation of Rs. 20 lacs.

3. Respondent No. 2 (The New India Assurance Company Ltd., Insurer of TN-33-A/6666) filed a detailed written statement contesting the maintainability of the petition. They pleaded that the claimants were only entitled to file a claim under the Workmen Compensation Act. Furthermore, they pleaded that the driver of truck No. TN-33-A-6666 was not holding a valid driving licence at the time of the accident. Crucially, they denied all allegations of negligence on the part of Sanger, asserting instead that the accident was the result of the fault and negligence of the deceased driver himself.

4. Respondent No. 4 (United India Insurance Co. Ltd., Insurer of PB-11-E/9257) also submitted a written statement to contest the claim. They raised a preliminary objection that the driver of the truck (the deceased) was not holding a valid driving license at the time of the occurrence. They maintained that since the injuries were received during the course of employment, only the Commissioner under the Workmen Compensation Act



held the competency to try the petition.

5. Respondent No. 3 (Eash Malhotra, Owner of PB-11-E-9257) and Respondent No. 1 (Thiru P. Nagarajan, Owner of TN-33-A-6666) both failed to appear despite notice, leading the Tribunal to proceed against them ex-parte on 21.01.1998 and 05.11.1997 respectively.

6. On the pleadings of the parties, the following issues were framed by Learned Tribunal:-

- “1. Whether Sangal alias Gobinda Raju, driver of truck No. TN-33/A-6666 while driving his truck rashly and negligently caused the death of Kala Singh alias Aya Singh on 19.4.96? OPP.*
- 2. Whether the claimants are the legal representatives/legal heirs of the deceased? OPP.*
- 3. Whether the claimants are entitled to the grant of compensation? If so, how much and from which of the respondents? OPP.*
- 4. Whether the driver of truck No. PB-11-E/ 9257 was not having a valid driving licence at the time of alleged accident? OPR.*
- 5. Whether the claim petition is not maintainable as alleged in preliminary objection No.2 of the written statement? OPR.*
- 6. Relief.”*

7. During the proceeding before the learned Tribunal, the respondent no.2 (Insurance company of the offending Truck bearing registration No. TN-33-A-6666) moved an application for production of the documents such as Registration and Fitness Certificates, route permit, insurance policy of offending Vehicle and driving licence of driver of offending vehicle, which was disposed of on 16.09.1998 holding that the issues in this case have already been framed on 21.08.1998 and there is no need to amend the same because those issues cover all the pleadings.

8. Upon appreciation of the oral and documentary evidence led by the parties, the learned Tribunal returned a categorical finding that the



claimants failed to establish that accident in question occurred due to rash and negligent driving of the offending Truck bearing registration No. TN-33-A-6666, holding that the statement of Angrej Singh (AW2) was rejected being not witness of the occurrence. However, the learned tribunal found that it was head on collision where both drivers were rash and negligent. Resultantly, the learned tribunal awarded compensation of Rs.50,000/- on account of “no-fault liability” and claim petition was dismissed on merits and Respondent no.2 (Insurance company of the offending Truck bearing registration No. TN-33-A-6666) was held liable to pay sum of compensation to the claimants.

CONTENTIONS

9. Learned counsel for the appellants contended that the accident was the direct and sole result of the rash and negligent driving of Sanger alias Govindaraju (driver of offending vehicle). To prove the issue of negligence, they primarily relied upon the oral testimony of Angrej Singh (AW 2), who presented himself as the conductor of the deceased's truck and a direct eye-witness to the collision. In addition to this oral evidence, they tendered documentary evidence including the F.I.R., post-mortem reports, and the death certificate.

10. Per Contra, the learned counsel for the respondents countered that the version of the accident put forth by Angrej Singh (AW2) was unreliable and had been introduced only to support the claim for compensation. They argued that AW 2 was a planted witness, noting that his name was conspicuously absent from the F.I.R. and that he had failed to produce any record, such as an employment register, to prove he was actually working as a conductor on truck No. PB-11-E/9257. A significant point of contention



raised by the Respondents was the physical impossibility of the witness's claim. They argued that in a head-on collision that resulted in the immediate death of both drivers, it was "not possible" for a person sitting in the cabin of the same vehicle to escape completely unhurt and that too without a single injury. They further highlighted that AW 2 admitted in cross-examination that he did not lodge the F.I.R. and that the dead body of the deceased was received by another individual, Nawab Singh, rather than him.

11. The Learned Counsel for the respondents further contended that there was a fundamental breach of the insurance policy terms and conditions, inasmuch as it was alleged by the respective insurers that the drivers of the vehicles were not holding valid and effective driving licences at the time of the accident. They argued that since the claimants failed to prove specific negligence of the respondent driver, no liability could be fastened upon the insurance company under Section 166 of the Act.

OBSERVATION AND FINDINGS

12. I have heard learned counsel for the parties and perused the complete records. On due consideration of the findings recorded by the learned Tribunal, the issues arising in the present appeal pertains to the issue of negligence, resultant assessment of the quantum of compensation and fastening of liability.

(i) Negligence and the Doctrine of Contributory Negligence

13. Issue No.1 was framed to determine whether the accident occurred due to the rash and negligent driving of Sangal alias Govinda Raju, driver of truck No. TN-33-A-6666. The learned Tribunal dismissed the claim on merits by holding that the claimants failed to prove negligence of the



offending driver, primarily on the ground that the collision was head-on and the eyewitness account appeared improbable. However, a reappraisal of the evidence on record warrants interference with the said finding. The case of the claimants rests primarily upon the testimony of Angrej Singh (AW2), who deposed that the offending truck was being driven in a rash and negligent manner and struck the vehicle of the deceased head-on. Merely because the witness escaped without injury, his presence cannot be discarded. In motor accidents, the possibility of an occupant escaping unhurt depending upon the manner and point of impact cannot be ruled out. His testimony constitutes ocular evidence attributing negligence to the driver of the offending vehicle.

14. At the same time, it remains undisputed that the collision was head-on between two heavy vehicles and that both drivers lost their lives. In such circumstances, the principle of contributory negligence becomes applicable. The fact that both vehicles collided front-to-front reasonably indicates that the deceased driver, Kala Singh, also failed to exercise the requisite standard of care. Consequently, the finding on Issue No.1 warrants modification to the extent of holding both drivers guilty of contributory negligence to the extent of 50% each.

(ii) Quantum Of Compensation

15. Before proceeding further, it is necessary to determine the income of the deceased, as assessment of compensation is fundamentally dependent upon a correct determination of earnings. As per the record and testimonies of deceased's widow Darshan Kaur (AW1) and Angrej Singh (AW2), the deceased was aged about 35 years and he was earning ₹4,500/-



per month as driver. However, no documentary evidence such as salary certificate, appointment letter, employer’s testimony, wage register or income tax record was produced to substantiate the claimed income of ₹4,500/- per month. In the absence of any reliable proof of actual earnings and keeping in view the nature of employment, the period of accident, this court deems it just and reasonable to assess the income ₹1,800/- per month (Prevailing minimum wages of skilled worker at the relevant time) for the assessment to compensation.

16. In result of the finding on the negligence, the assessment of the quantum is required to be awarded in terms of the principles laid down by Hon’ble the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680, *Magma General Insurance Co. Ltd. v. Nanu Ram alias Chuhru Ram*, 2018 (18) SCC 130 and *Sarla Verma v. DTC*, (2009) 6 SCC 121, wherein the framework for computation of “loss of dependency” by addition towards future prospects as per the nature of employment, deducting personal expenses of deceased, and applying appropriate multiplier on the basis of age of the deceased, and standardized amounts for conventional heads such as loss of estate, funeral expenses and loss of consortium, has been settled. The present matters, therefore, call for calculation of the amount under each of these heads by applying the correct deduction on basis of dependency and multiplier relatable to the age of the deceased and by granting the admissible sum towards consortium and other conventional heads as mandated in the aforesaid decisions. The assessment of the present claim is, therefore, undertaken as under:

Particulars	Assessed Award (₹)
-------------	-----------------------



Monthly Income	1,800/-
Income With Future Prospects (40%)	2,520/- (1,800 + 720)
Income After Deduction (4 Dependents)	1,890/- (1/4th For Personal Expenses)
Annual Contribution To Family	22,680/- (1,890 x 12)
Multiplier (age 35 yrs)	16
Loss Of Dependency	3,62,880/- (22,680 x 16)
Spousal Consortium	40,000/-
Parental Consortium (2 Children)	80,000/-
Filial Consortium (Mother)	40,000/-
Loss Of Estate	15,000/-
Funeral Expenses	15,000/-
Total Compensation	₹5,52,880/-

17. Hence, the total assessed compensation come to ₹5,52,880/-. However, this court has recorded the finding on Issue No.1 that the both drivers were guilty of contributory negligence to the extent of 50% each. Therefore, the claimants are entitled for the half of assessed compensation i.e. ₹2,76,440/-.

(iii) Absence of Valid Documents and Burden of Proof

18. In the proceedings before the learned Tribunal, the owner of the offending vehicle (Respondent No.1) was presumed to be served and thereafter was proceeded against ex parte vide order dated 05.11.1997. Moreover, during the proceedings of the claim petition, the Respondent No.2 (insurer of offending truck bearing registration No. TN-33-A-6666) had moved an application seeking production of documents such as registration certificate, fitness certificate, route permit, insurance policy of the vehicle involved in the accident and driving licence of the driver of the offending



vehicle. The said application was disposed of on 16.09.1998, observing that the issues had already been framed on 21.08.1998 and there was no necessity to amend the same.

19. Since it was the only owner of offending vehicle who was having the relevant documents of offending vehicle in his custody and he was required to place on record in the proceedings before learned Tribunal, only thereafter the authenticity and validity of the documents could be proved before the learned tribunal and the issue regarding the liability could be ascertained. The initial onus lies upon the owner of the offending vehicle and once such foundational facts are established, the burden shift upon the insurer to substantiate its statutory defence under Section 149(2) of the Motor Vehicles Act. The legal position regarding burden of proof in this aspect stands authoritatively settled by the Hon'ble Supreme Court in **Pappu and others versus Vinod Kumar Lamba and another, 2018 (3) SCC 208**, wherein it has been held as under:

“Para 11. The question is: whether the fact that the offending vehicle bearing No.DIL-5955 was duly insured by respondent No.2 Insurance Company would per se make the Insurance Company liable? This Court in the case of National Insurance Co. Ltd. (supra), has noticed the defences available to the Insurance Company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the Insurance Company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time. In the present case, the respondent No.1 owner of the offending vehicle merely raised a



vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. **The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle - that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.**

.....(emphasis added)”

20. In the present case, the owner of offending truck No. TN-33-A-6666, having choose not to appear and contest the claim petition, thus he was proceeded against ex parte. In result of it he did not lead any evidence whatsoever to establish that the driver, Sanger alias Govindaraju, possessed a



valid and effective driving licence, and the offending vehicle was having valid Registration Certificate, fitness certificate and route permit of the alleged vehicle involved in the accident on the day of accident. Foundational burden as contemplated in *Pappu (supra)* was never discharged by the owner of the offending Vehicle and therefore the liability cannot be fastened upon the insurance company of the offending vehicle (respondent no.2). Consequently, the findings of the learned Tribunal regrading fastening liability on insurance company of offending vehicle (Respondent no.2) is hereby set aside and the liability to satisfy the award is fastened upon Respondent No.1, owner of the offending vehicle.

21. In view of the above discussion, the compensation awarded by the learned Tribunal is enhanced from ₹50,000/- to ₹2,76,440/-. The enhanced amount shall carry interest at the rate of 7% per annum from the date of filing of the claim petition till realization. The Respondent No.1 (owner of offending truck bearing registration No. TN-33-A-6666) shall satisfy the enhanced award to the claimants.

22. Accordingly, the appeal is **allowed** with modification of the award to the above extent only.

23. Since the main case has been decided, pending miscellaneous application(s), if any, stand disposed of.

VIRINDER AGGARWAL
(JUDGE)

05.02.2026

kv

- (i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No